



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/169065

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 28, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Outagamie County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on November 10, 2015, at Appleton, Wisconsin.

The issue for determination is whether the agency correctly denied the Petitioner and his wife Foodshare benefits, effective October 1, 2015.

NOTE: The record was held open until the end of the day to obtain documentation of the Petitioner's immigration status. It has been marked as Exhibit 16 and entered into the record.

There appeared at that time and place the following persons:

Raabia Waheed was sworn in as the interpreter at Petitioner's request.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

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Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Kelly McCarthy, Staff Development Supervisor  
Outagamie County Department of Human Services  
401 S. Elm Street  
Appleton, WI 54911-5985

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Outagamie County.
2. Petitioner and his wife are permanent alien residents. They have lived in the United States since February 19, 2011. (Exhibit 16)
3. Petitioner completed a SMRF on June 29, 2015. (Exhibit 9)
4. He filed a change report on August 17, 2015. (Exhibit 9)
5. On September 9, 2015, the agency sent the Petitioner a notice indicating that two of his children were enrolled in the FoodShare program, but that Petitioner, his wife, and two other adult children were not enrolled in the Program because they are not U.S. Citizens or qualifying immigrants. (Exhibit 14)
6. The Petitioner filed an appeal that was received by the Division of Hearings and Appeals on September 28, 2015. (Exhibit 1)

### DISCUSSION

The Petitioner filed an appeal because he and his wife were denied FoodShare benefits.

A non-citizen who holds what is commonly referred to as a “green card” is considered Lawfully Admitted for Permanent Residence (LPR). *See page 1, SNAP: Guidance on Non-Citizen Eligibility*<sup>1</sup>

In order for an individual who is LPR to be eligible for FoodShare benefits, the individual must meet **one** of the following conditions:

1. Five years of residence,
2. 40 qualifying work quarters,
3. Be a child under 18,
4. Be blind or disabled and receiving benefits or assistance for the condition,
5. Be Elderly, meaning a person born on or before 8-22-31 who legally resided in the U.S. on 8-22-96, **or**
6. Have a military connection, i.e .on active duty (excluding National Guard), a veteran, is honorably discharged, but not due to immigration status, or a surviving spouse of a veteran.

*See page 2, SNAP: Guidance on Non-Citizen Eligibility; See also FoodShare Wisconsin Handbook (FSH §3.12.1.1*

The Petitioner has a “green card” / Permanent Resident Card. However he has not resided in the U.S. since February 19, 2011, so has not yet met the five year residency requirement. **NOTE: Petitioner and his wife, and 20-year old daughter will meet the five year residency requirement in February 2016, three months from now. Thus, as of that date, they will be eligible for benefits if all other financial and non-financial criteria are met.**

It does not appear that the Petitioner and his wife have worked 40 quarters, meaning 4 quarters per year.

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<sup>1</sup> [http://www.fns.usda.gov/sites/default/files/Non-Citizen\\_Guidance\\_063011.pdf](http://www.fns.usda.gov/sites/default/files/Non-Citizen_Guidance_063011.pdf)

Work quarters are counted regardless of immigration status, and a person can count the work quarters of a spouse. A person may also count the work quarters of a parent, before the person turned 18 years old. *See page 15 SNAP: Guidance on Non-Citizen Eligibility; See also FSH §3.12.1.3*

There is no information from the Social Security Administration establishing how many work quarters the Petitioner and his wife have worked and it is unclear whether the county agency has verified this through data exchange. However, it is not likely they have met the work requirement, since they have been in the U.S. less than five years and it does not appear that Petitioner's wife was working, based upon the notices and applications in the record.

Clearly, Petitioner and his wife are not children under 18. There is no evidence that they are blind or disabled. Their permanent resident cards show that they are not elderly and there is no evidence that Petitioner has a military connection.

Based upon the foregoing, it is found that the Petitioner and his wife are not yet qualified non-citizens for purposes of receiving FoodShare benefits.

It should be noted that there are other categories of non-citizens that are eligible for FoodShare benefits, such as a Cuban/Haitian entrant, a refugee, an asylee, a victim of extreme abuse, a victim of human trafficking, etc. However, Petitioner indicated that he did not fall into any of these categories of immigrants. FSH §3.12.1.1<sup>2</sup>

### **CONCLUSIONS OF LAW**

The agency correctly denied the Petitioner and his wife FoodShare benefits, effective October 1, 2015.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

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<sup>2</sup> Petitioner might also wish to look at: <http://www.fns.usda.gov/snap/snap-policy-non-citizen-eligibility>

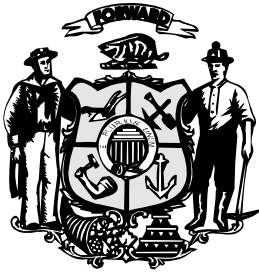
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 19th day of November, 2015.

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\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on November 19, 2015.

Outagamie County Department of Human Services  
Division of Health Care Access and Accountability